

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Burlington, Wisconsin

AURORA HEALTH CARE SOUTHERN LAKES, INC.,
D/B/A MEMORIAL HOSPITAL OF BURLINGTON¹

Employer

and

Case 30-RC-6185

WISCONSIN FEDERATION OF NURSES AND HEALTH
PROFESSIONALS, AFT, AFL-CIO, LOCAL 5012

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Labor Organization involved claims to represent certain employees of the Employer.

¹ The name of the Employer appears as amended at hearing.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All non professional employees, including skilled maintenance employees, employed by the Employer at its Memorial Hospital of Burlington, Burlington Clinic, Wellness Center, Warehouse, Twin Lakes Clinic, Waterford Clinic, and Paddock Lakes Clinic facilities located in Burlington, Wisconsin; excluding technical employees, business office clerical employees, guards and supervisors as defined in the Act.³

I. Overview

Prior to 1993, the Memorial Hospital of Burlington (Burlington Hospital) and the Burlington Clinic were owned and operated by completely separate entities, and neither Burlington Hospital nor Burlington Clinic had any affiliation with Aurora Health Care, Inc.

Although separate entities, Burlington Hospital and Burlington Clinic shared the same building

² Timely briefs from the Employer and Petitioner have been received and duly considered.

³ The unit that I have found appropriate is consistent with the bargaining units described in Section 103.30(a) of the Board's Rules and Regulations. Additionally, it is consistent with the service and maintenance unit both parties have used in formulating their position concerning an appropriate unit. Both parties agree, and I find, that the inclusion of skilled maintenance employees in this unit is appropriate. See Section 103.30(a) which provides that combinations of designated units may be appropriate when sought by the labor organization involved.

For the convenience of the parties, the following classifications are included in the unit: Plant Operations Secretary, Mail Room Clerk, Medical Records Coder, Lead Medical Transcriptionist/Medical Transcriptionist, Medical Records Clerk II/Medical Records Clerk, Storeroom Clerk, Medical Records Clerk/Lead Medical Records Clerk (Clinic), Medical Transcriptionist/Language Specialist / Lead Medical Transcriptionist/Language Specialist (Clinic), Home Based Transcriptionist (Clinic), Materials Management Coordinator, Lead Admissions Representative/Admissions Representative, Patient Access Specialist, Customer Service Representative, Referral Specialist (Clinic), Account Specialist (Clinic), File Clerk, Switchboard Operator, Rehabilitation Services Secretary and casual employees that have worked an average of 4 hours per week for the quarter preceding the election. The following classifications are not included in the unit: Secretary II, Regional Secretary, Account Specialist

located at 252 McHenry Street in Burlington, Wisconsin. In 1993, Burlington Clinic was acquired by Aurora Medical Group, Inc (AMG), a subsidiary of Aurora Health Care, Inc. (AHC). In 1997, Burlington Hospital was acquired by Aurora Health Care Southern Lakes, Inc. (Southern Lakes), also a subsidiary of AHC.

AHC currently owns seven health care related facilities in the Burlington, Wisconsin area: the Burlington Hospital, the Burlington Clinic, the Wellness Center, the Warehouse, the Twin Lakes Clinic, the Waterford Clinic, and the Paddock Lakes Clinic. Southern Lakes operates Burlington Hospital, the warehouse, and three other hospitals in southeastern Wisconsin. AMG operates the Burlington Clinic, the Twin Lakes Clinic, the Waterford Clinic, the Paddock Lakes Clinic, and a number of other Clinics throughout the state of Wisconsin. An independent third party operates and manages the Wellness Center on a contractual basis.

There is an existing unit of technical employees and registered nurses at Burlington Hospital represented by Petitioner. There is no history of collective bargaining for the employees sought here.

II. Issues

The Petitioner seeks an election among the employees of Burlington Hospital, which consists of approximately 170 employees, in the following unit proposed at the hearing:

All service and maintenance employees of the Employer at its acute care hospital facility located at 252 McHenry Street, Burlington, Wisconsin; excluding statutory supervisors, guards, professional and technical employees, business office clericals and employees of any other employer including but not limited to Aurora Health Care, Inc. and Aurora Medical Group, Inc.

Petitioner also argues that Burlington Hospital is a separate and distinct employer, and that a unit limited to Burlington Hospital is appropriate. The Employer contends, contrary to the Petitioner,

(Clinic), Medical Staff Coordinator, Business Office Representative, and Word Processing Specialist.

that employees described below of all seven facilities identified above constitute the only unit appropriate for collective bargaining. The Employer proposes the following unit, which consists of approximately 270 employees:

All full-time and regular part-time service and maintenance employees of the Employer at its Memorial Hospital of Burlington, Burlington Clinic, Wellness Center, Warehouse, Twin Lakes Clinic, Waterford Clinic, and Paddock Lakes Clinic facilities located in Burlington, Wisconsin.

Also at issue is the status of certain employees who Petitioner asserts are business office clericals who should be excluded from the proposed unit. Finally, the Employer, contrary to the Petitioner, would exclude certain employees as casual employees. I will first describe the facts underlying each of the above described issues, and thereafter set forth my analysis and conclusions.

III. Facts

A. Single Employer

The following is a factual discussion pertaining whether or not AHC, AMG, and Southern Lakes constitute a single employer. In order for separate corporate entities to be considered a single employer, there must be (1) an interrelation of operations, (2) a common management, (3) a centralized control of labor relations, and (4) financial control. *Central Mack Sales*, 273 NLRB 1268, 1271-1272 (1984).

1. Ownership of AHC, AMG, and Southern Lakes

As described above, the Burlington Hospital, Burlington Clinic, the Wellness Center, the Warehouse, the Twin Lakes Clinic, the Waterford Clinic, and the Paddock Lakes Clinic are facilities owned by AHC.

Burlington Hospital, as well as three other hospitals in Southeastern Wisconsin, are part of Southern Lakes, a subsidiary of AHC. The Burlington Clinic, the Twin Lakes Clinic, the

Waterford Clinic, the Paddock Lakes Clinic, as well as all other Clinics owned by AHC in the state of Wisconsin, are part of AMG, a subsidiary of AHC. AHC, Southern Lakes, and AMG are separate non-profit, non-stock, charitable corporations organized under 29 U.S.C. Sec. 501(c)(3). AMG and Southern Lakes have their own employer identification numbers for tax purposes. The Wellness Center is owned by AHC and affiliated with Burlington Hospital, but an independent third party operates and manages the facility on a contractual basis. The independent third party is not affiliated with AHC in any matter.

2. Management and Financial Control of AHC, AMG, and Southern Lakes

AHC, AMG, and Southern Lakes each have their own Board of Directors. AHC's Board of Directors has delegated authority over both AMG and Southern Lakes. The AHC Board has retained authority in the following areas with the exception of shared authority with regard to "(4)" (see Employer's Exhibit 23): (1) the sale, lease, purchase, creation, dissolution, conveyance or disposal of any affiliated, controlled, or joint venture entity, any real or personal property or other assets (or interest in any of the foregoing), or the incurrence of debt, (2) the modification of the mission, purpose, or scope of the Regional Organization, or change of the location, size or scope of services, program, operations or medical school affiliations or related government agreements within the Region, (3) annual evaluations of the executive leadership of the Region/Central Business Unit (CBU), and (4) the approval of financial, accounting, human resource, employee benefit and other policies and procedures (except patient care policies and procedures) and the appointment of auditors, legal counsel, and consultants.

The AMG and Southern Lakes Boards have authority in the following areas: (1) the approval of any single or group capital or operating expenditure within delegated approval authority, (2) recommendations for hospital based physician contracts, (3) responsibility for working in cooperation with the regional executive, AHC, and the leadership of the medical staff

members of hospitals and other facilities in the Region to establish appropriate medical staff credentialing and membership criteria as deemed appropriate by AHC, (4) annual evaluations of the executive leadership of the Region/CBU, and (5) coordination of the development of annual operating and capital budgets for the Regional/CBU for approval by AHC.

Burlington Hospital and Burlington Clinic have separate administrations. The Site Administrator at Burlington Hospital is Ann Navera. The Regional Administrator for the AMG, which includes all AHC Clinics, is Mark Kadlec. However, both Navera and Kadlec are subordinates to Lief Erickson, Jr., M.D., President, and Loren Anderson, Executive Vice President, both of AHC.

3. Operations of AHC, AMG, and Southern Lakes

Burlington Hospital (Southern Lakes) provides acute emergency and critical care for its patients. The Burlington Clinic, the Twin Lakes Clinic, the Waterford Clinic, and the Paddock Lakes Clinic (AMG) operate out-patient services largely on an appointment basis. The Burlington Hospital operates 24 hours a day, while the Clinics operate during regular daytime hours. Both the Burlington Hospital and each individual Clinic maintain its own separate patient records.

Maintenance employees sought by the Petitioner perform services at both the Burlington Hospital and the Clinics. Burlington Hospital has its own housekeeping service. While the Burlington Hospital housekeeping service perform services on occasion for the Burlington Clinic during the day, each of the Clinics contracts its evening housekeeping services to an independent third party.

The Burlington Clinic leases space from Burlington Hospital to operate a number of specialty Clinics – oncology, cardiology, vascular, EMG and occupational health within the

Burlington Hospital. The Burlington Clinic uses the Burlington Hospital pharmacy and laboratory.

There is interaction between employees at all AHC facilities. Again as noted, Burlington Hospital maintenance employees provide services to the Burlington Hospital, the Burlington Clinic, the Twin Lakes Clinic, the Paddock Lakes Clinic, the Waterford Clinic, the warehouse, and the Wellness Center. There is interaction between the maintenance employees and other employees of the respective facility primarily due to general disruptions associated with performing a maintenance service. Additionally, there are other employees (Clinic Nurses, Nurse Specialists, a Medical Records Clerk, RNs, and LPN, a Parish Nurse, a CS Tech I, and a Nurse Supervisor) who have worked in both the Burlington Clinic and the Burlington Hospital.

Burlington Hospital and Burlington Clinic employees interact on several levels. For example, they work side-by-side in the Cardiology unit. Burlington Hospital employees enter the Burlington Clinic to perform lab testing. There is interaction between Burlington Hospital and Burlington Clinic employees arising from the need to schedule or provide services for both Burlington Hospital and Burlington Clinic patients (i.e. sharing medical records, supplies, etc.) Additionally, Burlington Hospital's radiology department is used by the Burlington Clinic patients when more complex testing is required.

4. Labor Relations for AHC, AMG, and Southern Lakes

All AHC, Southern Lakes (including Burlington Hospital), and AMG employees (all the Clinics) are under one (AHC) Human Resource Department. The Human Resource Department has a Human Resource Manager and staff at the Burlington Hospital who are responsible for employees of both Burlington Hospital and Burlington Clinic. There are also Human Resource staff located at other AHC, Southern Lakes, and AMG entities.

All AHC, Southern Lakes, and AMG employees are permitted, and have transferred, between AHC corporations. Open positions are posted in all AHC facilities so that all employees have the opportunity to apply. When an employee requests a transfer, the employee must apply through the usual employment process. An interview often takes place, and confirmation of academic and references are required. When transferring, employees retain their seniority status. Transferring employees receive new employee identification numbers upon approval of their transfer.

All AHC, Southern Lakes, and AMG employees are subject to the same general disciplinary procedures. The grievance procedure utilizes either Southern Lakes or AMG supervisors, and the Vice President of Human Resources, who is an AHC employee. Steps 1 and 2 involve the grieving employee's immediate supervisor. The immediate supervisor can be an AHC, Southern Lakes, or AMG employee – it is based upon which corporation the grieving employee works for. Step 3 involves the area administrator. The area administrator can be an AHC, Southern Lakes, or AMG employee – it too is based upon which corporation the grieving employee works for. Step 4 involves the Vice President of Human Resource, an AHC employee, the area administrator of the corporation of the grieving employee, and the administrator of the department of the grieving employee.

All layoffs are initiated by the respective corporate entity (AHC, Southern Lakes, or AMG). However, when a laid off employee returns to work, he or she must report to the Human Resources Department. The Human Resource Department is an AHC entity.

As mandated by Board Authority (Employer's Exhibit 23), all AHC, Southern Lakes, and AMG employees share the same Educational Assistance Program. All AHC, Southern Lakes, and AMG employees are required to comply with the same drug-free policy, and fair employment policy.

All AHC, Southern Lakes, and AMG employees are eligible to participate in the same “Floating Policy”. Floating permits any AHC, Southern Lakes, or AMG employee to work for any AHC corporation. Any employee that works regularly scheduled hours for two or more AHC corporations is deemed a “joint appointed employee”. Joint appointed employees have separate records in the Payroll and Human Resource system respective to their dual employment with the AHC corporations. Supervisors or managers of joint appointed employees, regardless of which AHC entity they work for, are permitted to discuss disciplinary actions involving the respective employee with each other. The Primary Supervisor/Manager may discontinue an employee’s joint appointed status by informing both the secondary supervisor/manager (a.k.a. the floating supervisor/manager) and the employees for any reason with proper notice.

There is one application for employment used for all AHC, Southern Lakes, and AMG positions. In applying for a job, an applicant is instructed to mark the AHC facility and or position that he or she is interested. Human Resources, particularly Gene Krauklis, Vice President of Human Resources Southern Lakes, is involved in any suspension, discharge, and also generally in written reprimand of all employees.

It appears that collective bargaining is handled by the Human Resource Department (AHC). Gene Krauklis, on behalf of Burlington Hospital, executed the collective bargaining agreement with the Petitioner for the “RN” and technical bargaining unit. AHC’s Human Resource Department does not have control over the Wellness Center’s contractual management employees, but it does retain control over employees employed by AHC.

B. Single Facility

The following is a factual discussion pertaining to whether or not the Burlington Hospital and Burlington Clinic constitute a single facility. In order for an employer’s facilities to be considered a single facility, the facilities must be, “...sufficiently integrated, both physically and

operationally.” *Child’s Hospital Inc.*, 307 NLRB 90, 92 (1992). In the healthcare industry, there is a presumption that a single facility bargaining unit is appropriate. *Manor Healthcare Corp.*, 285 NLRB 224 (1987)

1. Physical Integration

The Burlington Hospital and the Burlington Clinic are located inside the same structure located at 252 McHenry Street, Burlington, Wisconsin. Both the Burlington Hospital and the Burlington Clinic have separate entrances, however access to each entity can be achieved through the other. Both the Burlington Hospital and Burlington Clinic share the same security staff. Both Burlington Hospital and Burlington Clinic employees use the same security key card which permits access to both the Clinic and Hospital. Both Burlington Hospital and Burlington Clinic employees share the same cafeteria and vending areas, and receive employee discounts at the cafeteria.

The Warehouse and the Wellness Center are not part of the Burlington Hospital/Clinic structure. The warehouse is approximately three blocks away from the Burlington Hospital/Clinic structure. The Wellness Center is within the city of Burlington, apparently not more than several miles (the record does not reflect the exact distance) from the Burlington Hospital/Clinic structure. The distance from the Burlington Hospital/Clinic structure to the Twin Lakes Clinic, Paddock Lakes Clinic, and Waterford Clinic is 9.6 miles, 11.6 miles, and 7.2 miles respectively.

2. Operational Integration

There is interaction between employees at all AHC facilities. Burlington Hospital maintenance employees provide services to the outlying clinics. There is interaction between the maintenance employees and other employees of these facilities primarily due to disruptions caused when maintenance services are performed.

The average patient stay at the hospital is less than 30 days. The Clinics are outpatient facilities only. As described above in the discussion of facts pertaining to the single employer issue, Burlington Hospital and Burlington Clinic have centralized control of labor relations and human resources, common personnel policies, and common administrative structures at the highest level. For a more detailed discussion of operational integration, refer to the single employer factual discussion at page 6, *supra*.

3. Wellness Center and Clinics

The Wellness Center is a rehabilitation facility and private health club. Rehabilitation aides from the Wellness Center often work with patients at the Burlington Hospital. The Clinics are satellite extensions of the Burlington Clinic. Since the record does not suggest otherwise, it appears job classifications at the outlying clinics are the same as the Burlington Clinic.

C. Other Clerical Employees

In the following is a factual discussion of whether or not “other clericals” should be included in the proposed bargaining unit. Although performing some clerical-type functions, “other clericals” are distinguished from business office clericals. The Board will include other clericals (but not business office clericals) in a service and maintenance unit in a health care institution when the two groups share a community of interest. In the following discussion, I have grouped disputed clericals by department and included similar classifications from both the hospital and clinics. The number of employees within each job classification is noted in parenthesis.

1. Business Development/Care Management Quality/HIM/Patient
Accounts/Administration

a. Secretary II (4)

A Secretary II is responsible for providing advanced secretarial support to the Vice President of Business Development and Regional Director of Strategic Communications and Marketing. He or she opens, sorts, and routes incoming mail, monitors and orders inventories of department supplies, and maintains files, binders, and logs. This individual is in the Business Development Department. They are located in the Emerson Regional office building which is adjacent to the hospital.

b. Regional Secretary (1)

A Regional Secretary is responsible for coordinating and performing diversified clerical, technical, and administrative duties for the South Region CM/Q (Care Management Quality) Director, Medical Director, and CM/Q Department Leadership. He or she maintains department files, binders, logs, and schedules. Also this position is responsible for opening, sorting, and routing incoming mail, typing letters, and making arrangements for meetings. This individual is located in the Care Management Quality Department.

c. Medical Staff Coordinator (unknown)

A Medical Staff Coordinator provides support, knowledge and resources needed for the medical staff (physicians, dentists, podiatrists, psychologists) and affiliate staff, enabling them to fulfill their duties and obligations. He or she must respond to requests from hospitals, insurance companies, etc. for references and other information regarding medical staff; and answer incoming calls from both internal and external customers. This individual is in the Care Management Quality Department.

d. Business Office Representative (1)

A Business Office Representative assists in the verification and pre-authorization of insurance benefits, estimation of self-pay amounts due, and collection of deposits. He or she also interviews patients to obtain insurance benefits, and interprets hospital policies regarding the payment of bills to patients. This individual is in the Patient Accounts Department.

Both parties have stipulated to the classification of Business Office Representative as a business office clerical. However, the Employer argues that this individual should be included as a “special circumstance” because there is only one position it considers a business office clerical.

e. Word Processing Specialist (3)

A Word Processing Specialist provides basic to advanced clerical services to support the needs of Memorial Hospital of Burlington, including handling non-routine problems, assisting physicians and staff in transcribing and typing correspondence, minutes, financial reports, and other materials. This individual is in the Administration Department.

f. Account Specialist (Clinic) (13)

An Account Specialist responds to billing inquiries from patients, responsible for arranging for payment of outstanding balances, provides problem resolution, and promotes customer relations. This individual is in the Patient Accounts Department.

2. Maintenance Department, Material Management

a. Plant Operations Secretary (unknown)

A Plant Operations Secretary is responsible for providing advanced secretarial support to all management and staff positions in the regional plant operations department, including the Director of Plant Operations, and the maintenance, housekeeping, biomedical and security departments. He or she has contact with the maintenance staff in the processing and distribution of maintenance work orders. This individual is in the Maintenance Department.

b. Mail Room Clerk (unknown)

A mail room clerk is responsible for picking-up and distributing inter-office and U.S. mail to all Burlington Hospital locations. He or she must also maintain the mailing equipment. This individual is in the Materials Management Department.

c. Storeroom Clerk (unknown).

A Storeroom Clerk is responsible for receiving all shipments that are shipped to the warehouse, and accurately filling orders for departments. This individual is in the Material Management Department.

d. Materials Management Coordinator (1)

A Materials Management Coordinator is responsible for organizing, operating, and coordinating all related Material Management functions and systems with Aurora Health Care and Burlington Clinic. This individual is in the Materials Management Department.

3. Medical Records

a. Lead Medical Transcriptionist/Medical Transcriptionist (11)

A Medical Transcriptionist is responsible for the accurate preparation and transcription of all medical reports and communications dictated by physicians. This individual is in the Medical Records and Imaging Department.

b. Medical Records Clerk II/Medical Records Clerk(4)

A Medical Records Clerk II prepares and maintains the medical records of recently discharged patients, reviews all records for completeness and legibility and routes charts for proper filing and/or completion. This individual is in the Medical Records Department.

A Medical Records Clerk is responsible for highly accurate alphabetical and numerical filing of outpatient records and inpatient records for quick retrieval purposes. This individual is in the Medical Records Department.

c. Medical Records Clerk/Lead Medical Records Clerk (Clinic) (see above)

A Medical Records Clerk/Lead Medical Records Clerk is responsible for performing clerical duties, and distributing charts and other medical information throughout the facility. This individual is in the Medical Records Department.

d. Medical Transcriptionist/Language Specialist / Lead Medical Transcriptionist/Language Specialist (Clinic) (11)

A Medial Transcriptionist/Language Specialist is responsible for interpreting and transcribing dictation by physicians and other healthcare professionals regarding patient assessment, workup, therapeutic procedures, Clinical course, diagnosis, and prognosis. This individual is in the Medical Records/Transcription Department.

e. Home Based Transcriptionist (Clinic) (see above)

A Home Based Transcriptionist is simply a Medial Transcriptionist/Language Specialist / Lead Medical Transcriptionist/Language Specialist that works in his or her home. In order to qualify for this program, the individual must complete a minimum of six months employment in the Medical Transcription Department. This individual is in the Medical Records/Transcription Department.

f. Medical Records Coder (3)

A Medical Records Coder retrieves and delivers requested information/records to a requestor in a timely fashion, and assigns numerical codes to all diagnosis and procedures based on the facility's records. He or she also has contact with past patients, and insurance companies. This individual is in the HIM Department.

4. Admitting, Patient Services, Patient Accounts, Communications, Various

a. Lead Admissions Representative/Admissions Representative(17)

An Admissions Representative is responsible for admitting and registering patients to the hospital, conducting patient interviews, and directing customers, patients, and visitors to appropriate areas in the hospital and Clinic. This individual is in the Admitting Department.

b. Patient Access Specialist (1)

A Patient Access Specialist is responsible for designing, coordinating, and performing all training and education of admitting staff. He or she must develop and maintain close positive relationships with CBU's (Central Business Units) and Medical Records. This individual is in the Admitting Department.

c. Customer Service Representative (46)

A Customer Service Representative is responsible for greeting and registering customers, completing necessary forms, obtaining required demographic and insurance information from patients, and collecting customer co-payments. This individual is in the Patient Services Department.

d. Referral Specialist (Clinic) (3)

A Referral Specialist is responsible for maintaining, confirming, and/or securing referrals or pre-certification needed on physician/Clinic services. He or she also must verify accurateness and completeness of admitting information on outpatients. This individual is in the Patient Accounts Department.

e. File Clerk (1)

A File Clerk is responsible for accurately filing patient information into the medical record according to established chart order. These individuals are located in various departments.

f. Switchboard Operator (5)

A Switchboard Operator operates the switchboard for the Burlington Hospital and Burlington Clinic and is responsible for providing routine information and direct calls to appropriate areas, as well as the paging of physicians and hospital personnel. This individual is in the Communications. Department. Performance expectations for switchboard operators include “provid[ing] customer assistance/information to employees, patients, [and] visitors.”

g. Rehabilitation Services Secretary (3)

A Rehabilitation Services Secretary performs a variety of clerical, secretarial, and receptionist functions in the Rehabilitation Services Department. He or she is responsible for scheduling patient appointments, collecting and processing Clinic activity information, and ensuring that necessary information is present in patient medical records. This individual is in the Rehabilitation Services Department.

D. Casual Employees

The following is a factual discussion pertaining to whether casual employees should be included in the bargaining unit. Casual employees will be included in a bargaining unit when a regularity of work is established. *Newton-Wellesley Hospital*, 219 NLRB 699 (1975).

Casuals are defined by the Employer as employees that, (1) are free to accept or decline hours that are offered by the Employer, (2) have no minimum hour work requirement, and (3) receive no benefits other than the opportunity to participate in the incentive savings plan and employee discounts offered at the cafeteria. Casual employees are generally employed in the housekeeping and food service departments. Although casual employees have the opportunity to refuse any offer of hours, if a casual employee commits to working a scheduled number of hours or days, the casual employee is obligated to work the scheduled time. Also, if a casual employee

repeatedly refuses for an extended amount of time to work, the Employer, more than likely, will stop offering the casual employee work hours.

Casual employees perform the same duties as the other full-time and regular part-time employees. Casual employees share the same supervisors, rates of pay, and job classifications with other full-time and regular part-time employees. Casual employees are also subject to the same work rules and disciplinary actions and work in the same work locations as other full-time and regular part-time employees.

During the 13 week time period of December 5, 1999 to March 5, 2000, the following employees have worked 4 or more hours per week for at least 10 of the 13 weeks: Denise Jurecki, Catherine Johnson, Holly Weiss, Amy Janish, Kimberly Whittaker, Nicholas Trimberger, Lindsay Aguirre, Kathleen Hartlage, and Gail Welter. It appears that the following employees have not worked 4 or more hours per week for at least 10 of the 13 weeks: Rebecca Klabunde, Mary Daniels, and Laura Bailey.

IV. Analysis and Decision

A. Appropriateness of Burlington Hospital Unit

In 1974, the Act was amended to extend coverage to the health care industry. In 1989, the Board subsequently engaged in rulemaking in order to define appropriate bargaining units in acute care hospitals. In relevant part, the Board found and incorporated in its Rules and Regulations Section 103.30 as follows:

Appropriate bargaining units in the health care industry:

(a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:

- (1) All registered nurses.

- (2) All physicians.
- (3) All professionals except for registered nurses and physicians.
- (4) All technical employees.
- (5) All skilled maintenance employees
- (6) All business office clerical employees
- (7) All guards
- (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. *Provided That* a unit five or fewer employees shall constitute an extraordinary circumstance.” Sec. 103.30(a)

The Board will permit units that do not comport to the above standards when “...there are existing non-conforming units in acute care hospitals.” Sec. 103.30(b) In short, units in acute care hospitals that existed before the Board’s amendment are “grandfathered in” as appropriate units. The Board defines an acute care hospital as “...either a short term care hospital in which the average length of patient stay is less than thirty days, or a short term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than thirty days.” Sec. 103.30(f)(2)

It is undisputed that there is an existing nonconforming unit at Burlington Hospital that was “grandfathered in” prior to the Act’s amendment, and therefore deemed an appropriate unit pursuant to Sec. 103.30(c).⁴

1. Single Employer Issue

In order for employees at different facilities to be included in the same bargaining unit, they must be of a single employer. *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1978). Employees of subsidiary corporations of a parent corporation may be combined into one bargaining unit only if the “... separate entities are actually part of a single-integrated enterprise so that for all purposes...there is in fact only a ‘single employer.’” *Geo v. Hamilton, Inc.*, 289 NLRB 1335 fn.2 (1988)[citing footnote]. The Petitioner argues that AMG, Southern Lakes, and

⁴ The existing nonconforming unit consists of technical employees and registered nurses.

AHC are separate employers, and therefore, the combination of employees at the Burlington Hospital, Burlington Clinic, the warehouse, the Wellness Center, the Twin Lakes Clinic, the Waterford Clinic, and the Paddock Lakes Clinic would constitute an inappropriate unit.

Again, in determining if an employer is a “single employer”, the following are factors considered: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) financial control. *Central Mack Sales*, 273 NLRB 1268, 1271-1272 (1984). Of the above mentioned first three criteria relating to operational integration, particular emphasis is placed on centralized control of labor relations. *Stoll Industries, Inc.*, 223 NLRB 51, 54 (1976). The party claiming that two separate entities constitute a single employer has the burden of proving the claim. *Beech Branch Coal Co.*, 269 NLRB 536, 537 (1984).

In this matter, the first question is whether AHC, AMG, and Southern Lakes constitute a single employer. I find that the Employer has provided sufficient evidence to support the finding that AHC, AMG, and Southern Lakes constitute a single employer.

There is clearly an interrelation of operations between AHC, AMG, and Southern Lakes. Maintenance employees perform services at (1) the Burlington Hospital (Southern Lakes), (2) the Burlington Clinic, the Twin Lakes Clinic, the Waterford Clinic, the Paddock Lakes Clinic (AMG), and (3) the warehouse, and the Wellness Center (AMG) on a regular basis. Also, several employees have taken advantage of the transfer and floating policies that permit AHC, AMG, and Southern Lakes employees to work intermittently, or on a permanent basis, for any AHC company. Furthermore, there is evidence of other forms of integration, such as the fact that Burlington Hospital’s daily housekeeping service performs services for the Burlington Clinic. Burlington Hospital and Burlington Clinic employees work side-by-side in the clinics cardiology unit. They also share the Burlington Hospital laboratory and its employees, radiology

department, central supply, and support services such as mail and switchboard. Medical records are regularly interchanged throughout the building.

There is common management between AHC, AMG, and Southern Lakes. As the Petitioner states in his brief, common management begins with the Board of Directors. While AHC, AMG, and Southern Lakes all have different Boards, both the AMG and the Southern Lakes Board are subordinate to the AHC Board. The AHC Board has final authority on issues involving essential business and operating decisions for AHC, AMG, and Southern Lakes. Also, both the highest ranking AMG official, Mark Kadlec (Regional Administrator of AMG), and the highest ranking Burlington Hospital official, Ann Navera, (Site Administrator – Southern Lakes), are both subordinates to Lief Erickson, Jr., M.D., President, and Loren J. Anderson, Executive Vice President (AHC).

Additionally, AHC has financial control over AMG and Southern Lakes. AHC has the final authority over the sale of all AHC entities, the incurrence of debt, and the final approval of accounting and financial issues.

There is also a centralization of labor relations functions between AHC, AMG, and Southern Lakes. As stated in *Stoll Industries, supra*, a common Human Relations Department is the most important factor in determining if an employer is a single employer. In this matter, AHC, AMG, and Southern Lakes share one Human Resource Department. All employees of any AHC entity are subject to the same disciplinary procedures, drug free policy, and fair employment policy. Open positions for any AHC entity are posted at all AHC, AMG, and Southern facilities. When employees decide to transfer, they retain AHC seniority status. AHC, AMG, and Southern Lakes employees are also permitted to work for other AHC entities. All AHC, AMG, and Southern Lakes employees are eligible to participate in a “floating policy” which permits any AHC, AMG, or Southern Lakes employee to work on an intermittent or

permanent basis for any AHC entity. When employees work a regularly scheduled number of hours for two or more AHC entities, they are considered “joint employees”. The supervisors of joint employees are permitted to consult with each other when their employee is the subject of disciplinary action. Finally, AHC, AMG, and Southern Lakes share the same grievance policy. While Steps 1-3 only involve officials of the respective corporate entity, Step 4 involves the Vice President of Human Resources, an AHC employee.

The Petitioner argues that AHC, AMG, and Southern Lakes do not constitute a single employer. The Petitioner asserts that there is insufficient common management between the entities for them to be a single employer. In making this argument, the Petitioner’s relies heavily upon the fact that AHC, AMG, and Southern Lakes do not share the same Board of Directors. The Petitioner cites a number of cases in which single employer status was found, including *Presbyterian Hospital v. NLRB* 88, F.3d 1300 (3rd Cir., 1996); *Staten Island University Hospital v. NLRB*, 24 F.3d 450 (2nd Cir., 1994); *Presbyterian/St. Luke’s Medical Center*, 289 NLRB 249 (1988); *Mercy Hospitals of Sacramento, supra*, and *Pathology Inst Inc.*, 320 NLRB 1050 (1996), to make the broad assertion that in most cases in which related corporations have been held to constitute a single employer, there has been either (1) a single Board of Directors governing the different entities, (2) a substantial identity between the two Boards, or (3) one Board’s domination over another Board. The Petitioner argues that since the Board of Directors in AHC, AMG, and Southern Lakes are comprised of different members, there is no substantial identity between the two Boards. The Petitioner also argues that neither the AHC, AMG, nor Southern Lakes Boards are dominant over each other. In this matter, it is clear that the AHC Board of Directors dominates both the AMG and Southern Lakes Boards.

As discussed earlier, the AHC Board of Directors has control over all vital business and operating functions of both the AMG and Southern Lakes corporations. The AHC Board of

Directors has control over (1) the sale, lease, purchase, creation, dissolution, conveyance or disposal of any AHC corporation, (2) the incurrence of debt, (3) the modification of the mission, purpose, or scope of the Regional Organization, (4) the change of the location, size, or scope of services, program, operations or medical school affiliations, (5) annual evaluations of the executive leadership, (6) the approval of financial, accounting, human resource, and employee policies and benefits, and (7) the appointment of auditors, legal counsel, and consultants.

Comparatively, the AMG and Southern Lakes Boards provide basically an advisory function to the AHC Board, and possesses no control over important business or operational decisions relating to their respective corporation. Both the AMG and Southern Lakes Boards of Directors can only (1) approve limited financial expenditures, (2) recommend hospital based physician contracts, (3) make recommendations to establish appropriate medical staff credentialing and membership criteria as deemed appropriate by AHC, (4) provide annual evaluations of the executive leadership, and (5) propose the annual operating and capital budgets for the Regional/CBU for approval by AHC. None of these delineated responsibilities have any substantive control over AMG or Southern Lakes operational or business functions. The AHC Board has clear dominance over both the AMG and Southern Lakes Boards.

The Petitioner also argues that there is insufficient interrelation of operations to constitute a single employer. The Petitioner asserts that because the Clinics provide different services (out-patient services on an appointment basis) than the Hospital (in-patient acute emergency care), the two facilities are not sufficiently interrelated. The Petitioner further argues that although there is interchange between employees of AHC, AMG, and Southern Lakes, it is not sufficient to constitute a single employer.

I find that there is sufficient interrelation of operations to constitute AHC, AMG, and Southern Lakes as a single employer. The argument that since the Clinics and the Hospital

provide different patient services, the entities can not be a single employer is not convincing. In *Mercy Hospital*, supra, the Board found that an employer that operated both a long-term geriatric care facility and two adjacent acute care hospitals was a single employer because there was an interrelation of operations, common management, and centralized control of labor relations. This matter is analogous to *Mercy Hospital* in that although AHC, AMG, and Southern Lakes operate facilities with different functions, all three entities share an interrelation of operations, common management, and centralized control of labor relations, and therefore, still constitute a single employer.

Perhaps most convincing in my determination that AHC, AMG and Southern Lakes constitute a single employer is that the Petitioner has not refuted the fact that there is centralized control of labor relations between the three entities. As stated in *Stoll Industries*, this is the most important factor in considering whether separate corporations constitute a single employer. Accordingly, I find that there is sufficient integration of operations, management, labor relations, and financial control to find that AHC, AMG, and Southern Lakes constitute a single employer.

2. Single Facility Issue

Again in order for an employer's facilities to be considered a single facility, the facilities must be "...sufficiently integrated, both physically and operationally." *Child's Hospital Inc.*, supra. In *Child's Hospital*, the Board found that The Child's Hospital (hospital), The Child's Nursing Home (nursing home), and Samaritan Service Corporation (housekeeping, human resources, administration, maintenance, lab, medical records, supply and pharmacy services to the hospital and nursing home) were a single facility. The Board found the following:

The nursing home, the hospital, and Samaritan are physically contiguous, there is centralized control of labor relations and human resources, common personnel policies, uniform benefits and wage scales, one employee handbook, and common administration and financial services. Vacancies are posted employer-wide. Laundry, pharmacy services, housekeeping, dietary services, maintenance and engineering are all provided facility-wide, and the hospital provides lab work to the residents and employees of the nursing home. There is also a fairly high degree of contact among the employees working in different operations. Thus, on this basis we find that the three operations comprise a single facility for purposes of collective bargaining. *Id.* at 92

In *Hamilton Memorial Home*, Case 30-RC-5535, the Board reversed the Director's conclusion that a nursing home and hospital could be separate/appropriate units, and instead found that a physically connected nursing home and hospital constituted a single facility, and that the proposed unit of nursing home employees must include other non-professional employees located at the adjacent hospital in order to be appropriate. In *Hamilton*, the nursing home and the hospital were connected by an enclosed walkway. Although each facility had its own entrance for patients, employees of both locations could reach their place of employment through either entities entrance. The hospital and nursing home shared common labor relations and personnel policies. Vacancies were posted employer-wide, and employees transferring from the hospital to the nursing home, or vice versa, retained their seniority. There was also integration of operations between the nursing home and the hospital. Both shared numerous services such as dietary, housekeeping, plant operations, security, pharmacy, laboratory, x-rays, and laundry facilities.

I find this case to be factually similar to *Hamilton Memorial Home* and *Child's Hospital*. I hold that Burlington Hospital and Burlington Clinic constitute a single facility. Just as in *Child's Hospital* and *Hamilton Memorial Home*, Burlington Hospital and Burlington Clinic are physically integrated. Not only are the Burlington Hospital and the Burlington Clinic located in the same building, but employees of both entities use common entrances, share the same security access card, cafeteria and vending areas.

Both Burlington Hospital and Burlington Clinic are operationally integrated. Just as in *Child's Hospital* and *Hamilton Memorial Home*, there is common management at the highest level. Although Southern Lakes (Burlington Hospital) and AMG (Burlington Clinic) have different management structures at the low and mid-management levels, both share a common

upper management. For example, the Site Administrator at Burlington Hospital is Ann Navera. The Regional Administrator for the AMG, which includes Burlington Clinic, is Mark Kadlec. However, both Navera and Kadlec are subordinates to Lief Erickson, Jr., M.D., President, and Loren Anderson, Executive Vice President, both of AHC.

Also, there is centralized control of labor relations and human resources. There are common personnel policies, general disciplinary procedures, drug policies, and fair employment policies. Job vacancies are posted at both the Burlington Clinic and the Burlington Hospital. Burlington Hospital and Burlington Clinic employees can transfer, or float on a permanent or temporary basis, between the Burlington Hospital and the Burlington Clinic. Finally, there is also interaction between Burlington Hospital and Burlington Clinic employees that has been discussed previously.

I find that there is sufficient operational and physical integration between Burlington Clinic and Burlington Hospital to find it a single facility. A practical view of the Clinic and Hospital relationship is also required here. Clinic and hospital employees commingle throughout the facility. Clinic employees work in immediately adjacent areas (oncology, cardiology, vascular, EMG and occupational health) which are physically located within the Hospital. Excluding Clinic employees would result in unit fragmentation and create the strong possibility of unit proliferation. Separate units for the Hospital and Clinic greatly increase the prospect of labor disruptions and would be contrary to express Congressional policy. *Presbyterian/St. Luke's Medical Center v. NLRB*, 653 F.2d 450, 455 (10th Cir., 1981).

3. The Status of Other Facilities

If an employer's facilities are determined to be a single facility, there is a rebuttable presumption that the single facility unit is an appropriate bargaining unit. *Manor Healthcare Corp.* 285 NLRB 224 (1987) The presumption has been overcome here and I find that the

Burlington Hospital, the Burlington Clinic, in addition to the Paddock Lakes Clinic, the Twin Lakes Clinic, the Waterford Clinic, the Wellness Center, and the Warehouse are an appropriate unit.

In determining if the presumption has been rebutted, the Board examines traditional community-of-interest factors such as (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) degree of employee interchange; (4) common supervision; (5) distance between locations; (6) bargaining history. *Mercy Health Services*, 311 NLRB 367 (1993).

In *West Jersey Health System*, 293 NLRB 749 (1989), the Employer operated four hospital facilities in a single non-profit system. The four facilities were located in Voorhees, New Jersey (Eastern Division); Berlin, New Jersey (Southern Division); Camden, New Jersey (Northern Division); and Marlton, New Jersey (Garden State Division). The distances between the Northern and Southern Divisions, Northern and Eastern Divisions, and Eastern and Southern Divisions were 20 miles, 12 miles, and 9 miles respectively. The distances between the Garden State Division and Northern Divisions, Garden State and Eastern Divisions, and Garden State and Southern Divisions was 11 miles, 2 ½ miles, and 11 miles respectively. All four divisions had the same personnel policies and procedures. Job vacancies were posted on a system wide basis, and employees were transferred or promoted without loss of seniority. Furthermore, there was an integrated grievance procedure that included a Step 1 meeting with the employee's immediate supervisor, a Step 2 meeting with the employee's department head, a Step 3 meeting with the corporate personnel director, and a Step 4 meeting with the system administrator.

Just as in *West Jersey Health System*, AHC has a hospital and Clinics within a 10 mile radius of each other. Also, AHC entities share the same personnel policies and procedures, job vacancies are posted on a systemwide basis, and employees are transferred or promoted without

loss of seniority. Furthermore, AHC has a similar grievance procedure to the employer in *West Jersey Health System*. Finally, there is employee interchange between all AHC connected maintenance and service employees.

The Petitioner argues that the Wellness Center and the warehouse should not be included in the bargaining unit. The Petitioner asserts that since (1) the Wellness Center is contractually managed by an independent and separate 3rd party not affiliated with AHC, (2) the Wellness Center is not close geographically to the Burlington Hospital/Clinic structure, and (3) there is limited interchange between the Wellness Center employees, the Burlington Hospital employees and the Clinic employees, than the Wellness Center employees should not be included in the bargaining unit.

I find that although managed by a third party, the Wellness Clinic employees continue to share a community of interest with the Burlington Hospital, the Burlington Clinic, the Paddock Lakes Clinic, the Twin Lakes Clinic, the Waterford Clinic, and the Warehouse employees. The Wellness Center is close geographically. Although not clear in the record, the Wellness Center is within the city limits of Burlington, and it is much closer to the Burlington Hospital/Clinic facility than the Paddock Lakes Clinic, the Waterford Clinic, and the Twin Lakes Clinic. Also, there is considerable interchange between the Wellness Center employees and Burlington Hospital employees. Rehabilitation Aides frequently go to the Burlington Hospital to perform in-patient services, and Burlington Hospital's service and maintenance employees regularly service the Wellness Center. Also, the Wellness Center is used by Burlington Hospital and Burlington Clinic for new employee training. Finally, although the Wellness Center is contractually managed by an independent third party, the AHC human resource department has control over all AHC and AMG employees at the facility. Accordingly, Southern Lakes

employees at the Wellness Center are subject to the same human resource policies and provisions as all other AHC, AMG, and Southern Lakes employees.

Even if the Wellness Center employees did not share a community of interest with the other employees in the bargaining unit, they would be included in the unit based on “extraordinary circumstances.” There are three Rehabilitation Aides at the Wellness Center, and three Rehabilitation Secretaries. In the Health Care Bargaining Unit Rules, 54 Fed. Reg. 16341⁵, 284 NLRB at 1588 (1989), the Board stated the following:

We agree that units of two or three employees, or of similarly small numbers of employees, would in many cases be impractically small, especially in the health care industry. Where so few employees are involved, it can be argued with some degree of persuasiveness that despite the shared, unique concerns and backgrounds that would otherwise make the separate units appropriate, these concerns are outweighed by concerns over disproportionate, unjustified costs and undue proliferation of units...[A] petitioned-for unit of five employees or fewer shall constitute an “extraordinary circumstance.

Accordingly, even if the six employees at the Wellness Center did not share a community of interest with the other employees in the bargaining unit, because of the small number of employees at the Wellness Center, the Wellness Center employees would be included in the unit to deter the undue proliferation and costs associated with creating a separate bargaining unit.

The Petitioner also states that the warehouse employees should be excluded from the bargaining unit. The Petitioner argues that there is insufficient evidence to conclude that the warehouse employees should be included in the bargaining unit. It appears that the warehouse employees have considerable interaction with other employees. Employees at the warehouse are responsible for receiving and distributing supplies to both Clinic and Hospital locations. In distributing these supplies, warehouse employees have contact with service and maintenance employees.

⁵ Found in volume 284 of the Decisions and Orders of the National Labor Relations Board.

The Petitioner did not specifically address in its brief whether the Paddock Lakes Clinic, the Waterford Clinic, or the Twin Lakes Clinic employees should be included in the bargaining unit. I assume that the Petitioner would oppose such an inclusion, but the facts reflect employee interchange, and similarity of duties. Employees at the outlying clinics and Burlington provide the same services and share common wages, hours, employment policies, and essential working conditions. I also note the above described “impracticality” of small units.

Based on all of the above, I find that that the Burlington Hospital, the Burlington Clinic, the Paddock Lakes Clinic, the Twin Lakes Clinic, the Waterford Clinic, the Wellness Center, and the Warehouse is a multi-facility unit, and that the presumptive appropriateness of the Burlington Hospital/Burlington Clinic single facility unit has been rebutted.

B. Other Clericals

In the Board’s rulemaking, the Board has recognized the distinction between “business office clericals” and “other clericals” in the health care industry. 53 FR 33924-339296.⁶ The Board noted that business office clericals perform distinct functions such as the handling of finances and billing, and dealing the with Medicare, Medicaid, and other reimbursement systems. Employees will generally be classified as business office clericals when they (1) have minimal contact with unit employees or patients, (2) work in isolated geographic areas of the hospital, (3) or perform functions, separate and apart from service and maintenance employees. *St. Luke’s Episcopal Hosptial*, 222 NLRB 674, 675 (1976). Employees may also be classified as business office clericals when they are supervised separately and physically isolated from other nonprofessionals. *Rhode Island Hospital*, 313 NLRB 343, 359 (1993). Under these circumstances, such employees will be classified as business office clericals, and excluded from service and maintenance units for a lack of community of interest.

Although performing some clerical-type functions, “other clericals” are distinguished from business office clericals. The Board will include other clericals in a service and maintenance unit in a health care institution when they share a community of interest. The Board has included other clericals in service and maintenance units in hospitals when they have contact with the service and maintenance unit. *Id.* However, even if the other clericals do not have interaction with service and maintenance employees, other clericals may still be included in a service and maintenance unit as long as the lack of interaction between the other clericals and the service and maintenance employees is not from a result of having them grouped together in isolation from other non-professionals. *Lincoln Park Nursing And Convalescent Home, Inc.*, 318 NLRB 1160, 1164 (1995).

The Petitioner seeks exclusion of the following job classifications in the proposed bargaining unit based on their argued status as business office clericals: Secretary II, Plant Operations Secretary, Regional Secretary, Mail Clerk, Admissions Representative, Lead Admissions Representative, Medical Transcriptionist, Lead Medical Transcriptionist, Medical Records Coder, Medical Staff Coordinator, Patient Access Specialist, Switchboard Operator, Medical Records Clerk, Medical Records Clerk II, Word Processing Specialist, Business Office Representative, Storeroom Clerk, Rehabilitation Services Secretary, File Clerk, Medical Records Clerk, Lead Medical Records Clerk, Medical Transcriptionist/Language Specialist, Lead Medical Transcriptionist/Language Specialist, Home Based Transcriptionist, Customer Service Representative, Referral Specialist, Account Specialist, and Materials Management Coordinator.

I find that the following are business office clericals that should not be included in the proposed bargaining unit: Secretary II, Regional Secretary, Account Specialist (Clinic), Medical Staff Coordinator, Business Office Representative, and Word Processing Specialist.

⁶ Found in volume 284 of the Decisions and Orders of the National Labor Relations Board.

In *Rhode Island Hospital*, supra at 361, the Board found that employees that do not have sufficient contact with the service and maintenance unit, have no contact with patients, and perform functions such as general accounting, secretarial, and other clerical functions should not be included in a service and maintenance unit. In this matter, just as in *Rhode Island Hospital*, I find that the Secretary II, Account Specialist (Clinic), Regional Secretary, Medical Staff Coordinator, Business Office Representative, and Word Processing Specialist employees perform primarily business office clerical functions, and therefore, are appropriately excluded from the service and maintenance unit for lack of community interest.

I find that the following are other clericals that should be included in the proposed bargaining unit: Plant Operations Secretary, Mail Room Clerk, Medical Records Coder, Lead Medical Transcriptionist/Medical Transcriptionist, Medical Records Clerk II/Medical Records Clerk, Storeroom Clerk, Medical Records Clerk/Lead Medical Records Clerk (Clinic), Medical Transcriptionist/Language Specialist / Lead Medical Transcriptionist/Language Specialist (Clinic), Home Based Transcriptionist (Clinic), Materials Management Coordinator, Lead Admissions Representative/Admissions Representative, Patient Access Specialist, Customer Service Representative, Referral Specialist (Clinic), File Clerk, Switchboard Operator, and Rehabilitation Services Secretary.

In *Central General Hospital*, 223 NLRB 110 (1976), the Board found that employees dealing with medical records should be included in a service and maintenance unit.

Although they are engaged in clerical functions, have no special training, and only occasionally go onto the floors, they deal primarily with patients' medical records rather than with the types of records kept by business office employees. In performing their constructing and maintaining patients medical records, they work closely with doctors and nurses. Under similar circumstances, we have held that medical records employees are service clericals, not office clericals and, accordingly, in the instant case, we see no reason why these employees are not properly includable in the existing service and technical unit. *Id.* at 111

In this matter, just as in *Central Hospital*, the Lead Medical Transcriptionist/Medical Transcriptionist, Medical Records Clerk II/Medical Records Clerk, Medical Records Clerk/Lead Medical Records Clerk (Clinic), Medical Transcriptionist/Language Specialist / Lead Medical Transcriptionist/Language, Specialist (Clinic), and Home Based Transcriptionist (Clinic) employees deal primarily with doctors, patients, and patient records. Accordingly, I find them to be appropriately included in the bargaining unit.

In *Rhode Island Hospital*, supra, the Board found that employees dealt directly with patients should be included in a service and maintenance unit. The Board included those employees that were directly involved in the registration and/or admission of patients (including those individuals that gathered demographic and insurance information directly from the patients).

In this matter, just as in *Rhode Island Hospital*, I find that the Lead Admissions Representative/Admissions Representative, Patient Access Specialist, Customer Service Representative, and Referral Specialist (Clinic), all have sufficient contact with patients to be appropriately included in the bargaining unit.

In *St. Luke's Episcopal Hospital*, 222 NLRB 674, 677 (1976), the Board included secretaries and clerks in a service and maintenance unit "because of the nonbusiness office nature of their function and their intimate contact with employees in the service and maintenance unit." Furthermore, in *Parkvue Medical Center & General Hospital*, 183 NLRB 559 (1970), the Board found the inclusion of switchboard operators appropriate in a service and maintenance unit.

With regard to the disputed classifications, the record shows that there are one full-time and four part-time hospital-employed switchboard operators whose duties consist of manning the switchboard, recording calls, notifying doctors of meetings, coordinating job requests for maintenance, light typing such as preparing operating room schedules, and stuffing envelopes with hospital announcements. The majority of their

time, however, is spent performing switchboard duties...In view of the foregoing, and the consequent community of interest which switchboard operators share with hospital and center employees, we shall include them in the unit. *Id.* at 562

I further find that that the Plant Operations Secretary, Mail Room Clerk, Materials Management Coordinator, File Clerk, Switchboard Operator, and Rehabilitation Services Secretary do not perform traditional business office clerical functions, and have sufficient contact with the service and maintenance unit to be included in the unit.

C. Casual Employees

The Employer classifies “casual employees” as those employees that (1) are free to accept or decline hours that are offered by the Employer, (2) have no minimum hour work requirement, and (3) receive no benefits other than the opportunity to participate in the incentive savings plan and employee discounts offered at the cafeteria. In order for casual employees to share a sufficient community of interest to be included in a bargaining unit with regular full-time and part-time employees, the casual employee must demonstrate a sufficient regularity of work. *Trump Taj Mahal Casino Resort*, 306 NLRB 294 (1992). The Board summarized the general rule for including casual employees in a bargaining unit in *Newton-Wellesley Hospital*, 219 NLRB 699, 703 (1975):

As it appears that on the on-call [casual employees] work on a regular, though unscheduled, basis covering most pay periods during the year and perform the same tasks, in the same areas as the [casual employees] who are included in the unit, we find that they are regular part-time [casual employees] and shall include them in the unit herein found appropriate.

In this matter, I find that casual employees have a sufficient community of interest with co-workers to be appropriately included in the bargaining unit. Casual employees perform the same duties as the other full-time and regular part-time employees. They also share the same supervisors and rates of pay, work in the same work locations, are subject to the same work rules and disciplinary actions as other full-time and regular part-time employees.

In *Sisters of Mercy Health Corp.*, 298 NLRB 483, 484 (1990), the Board found that on-call nurses were appropriately included in a bargaining unit when they averaged 4 hours or more of work per week during the quarter prior to the eligibility date. In this matter, I find that the 4 hours or more of work per week (calculated from the last quarter prior to the election date) standard to be appropriate. Accordingly, it appears that the following individuals will be eligible to vote and be appropriately included in the bargaining unit: Denise Jurecki, Catherine Johnson, Holly Weiss, Amy Janish, Kimberly Whittaker, Nicholas Trimberger, Lindsay Aguirre, Kathleen Hartlage, and Gail Welter.

ELECTION DIRECTED IN A BROADER UNIT

The record in this matter does not disclose whether Petitioner is willing to proceed to an election in the broader unit I have directed herein. Inasmuch as the election being directed is in a much broader unit than that sought by Petitioner, I direct Petitioner notify me within 14 days whether it declines to proceed to an election. In the event the Petitioner declines to proceed to an election in the broader unit found appropriate herein, this Decision constitutes dismissal of the petition. No additional showing of interest is required.

In accordance with Section 102.67 of the Board's Rules and Regulations as amended, all parties are specifically advised that absent an express declination by petitioner to proceed to election I in the bargaining unit directed, I will conduct the election in the unit found appropriate, when scheduled even if a Request for Review is filed, unless the Board expressly directs otherwise.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit

who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO, Local 5012.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed,**

such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before May 9, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by May 16, 2000.**

Signed at Milwaukee, Wisconsin this 2nd day of May 2000.

Philip E. Bloedorn, Regional Director
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